

REMARKS/ARGUMENTS

The amendments set forth above and the following remarks are responsive to the points raised by the Office Action dated January 23, 2009. In view of the amendments set forth above and the following remarks, reconsideration is respectfully requested.

The Pending Claims

Claims 1-12 remain pending. Claim 1 is amended to describe the invention more clearly. No new matter is added, and support for the amended claim language may be found within the specification, claims, and drawings. Support for claim 1 may be found in the specification at, e.g., Figures 1-2.

The Office Action

Claims 1-12 were rejected under 35 U.S.C. § 103 as unpatentable over U.S. Patent Application Publication 2002/0013138 to Benthin et al. (hereinafter, "Benthin") in view of U.S. Patent Application Publication 2003/0155479 to Kishi et al. (hereinafter, "Kishi").

This rejection is respectfully traversed.

The obviousness rejection cannot be maintained. First, modifying the device of Benthin to have pivoting panel taught by Kishi, as proposed in the Office Action, would render the device of Benthin inoperable.

As explained in the previous response filed October 13, 2008, Benthin teaches a car radio receiver that operates as 1) a car radio wherein the control panel 5 is in place within the receiver 1 and 2) a mobile telephone wherein the control panel 5 is fully removed from the receiver 1.

Proper operation in radio mode depends on maintaining the electrical contacts of the bush 16 on the control panel 5 with the bush 17 on the receiver 1 and the contacts of the infrared transmitter 26, 27 (on the receiver) with those (21, 22) on the control panel. Benthin provides four retaining tabs 95 for keeping the control panel mounted in the receiver to maintain these connections (par. [0021]-[0024]).

Proper operation in telephone mode involves removing the control panel 5 from the receiver 1, and activating the retractable antenna 30, earpiece 40, and microphone 45. The user can improve reception by lengthening the antenna ([0026]). Thus, the telephone best operates with a lengthened antenna and, naturally, listening by holding the earpiece to the ear.

The Applicant maintains that the device of Benthin would not function properly as a radio with a pivoting panel as taught in Kishi, as alleged in the Office Action. Pivoting the control panel 5 outward from the receiver 1 would disconnect the bushings 16 and 17 and the transmitters 21, 22 and 26, 27 so that the device would operate in the telephone mode. Nor would it be practical to operate the device in telephone mode with a pivoting panel, because it would involve extending the antenna (into the way of the driver or the passenger) and prevent the user from holding the earpiece to the ear.

The Office Action asserts that the combination of Benthin with Kishi would not render Benthin inoperable because modifying Benthin with Kishi would ensure that all connections needed to operate Benthin's panel would also be included in the pivoted part of the housing, as seen in Kishi.

The modification proposed by the Office Action is improper because it alters the entire principle of operation of the device of Benthin. If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious (MPEP § 2143.01 (VI)). Modifying Benthin in view of Kishi to include all connections needed to operate Benthin's panel in the pivoted part of the housing would *eliminate* contacts of electrical bushings and transmitters between the receiver and the control panel. This would be completely contrary to the operation of the device of Benthin, which clearly operates on the principle of making and disconnecting electrical and transmitter contacts *between* the receiver 1 and the control panel 5 not only to enable the radio to function, but to switch between telephone and radio modes. Because the proposed modification completely alters the principle of operation of the device of Benthin, the obviousness rejection cannot be maintained.

Amended claim 1 recites that the top part of the control panel is pivotable from an upward position wherein the control panel lies flat on the chassis front side forward away from the chassis to a downward position extending therefrom for operation. As shown in Figures 1 and 2 of Benthin, the *front* of the control panel includes the buttons for operating the device, while the *back* of the panel has the transmitters 21, 22 for connection to the transmitters 26, 27 on the back panel of the recess of the receiver. Pivoting the *top* portion of the control panel of Benthin from its proper position flat in the receiver (with the buttons in front) *forward* away from the chassis to a downward position, as in Kishi, would place the buttons for operation of the control panel underneath the control panel and away from the user, so that the user cannot see the buttons to operate them. In Kishi, the top portion of the control panel with the buttons in front can only pivot backwards (towards the chassis), not forwards (away from the chassis), to still have the buttons visible to the user (Fig. 9 of Kishi). Accordingly, the obviousness rejection cannot stand.

Finally, the obviousness rejection cannot be maintained because the Office Action's rationale for modifying the device of Benthin to have the pivoting panel taught by Kishi is not applicable to the device of Benthin. Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art and must provide an appropriate supporting rationale for the proposed modification (*KSR International Co. v. Teleflex Inc. (KSR)*, 550 U.S. 398, 82 USPQ2d 1385 (2007); (MPEP § 2141)). By citing an inappropriate rationale, the Office Action fails to do this.

The Office Action alleges that it would have been obvious to modify the device of Benthin to have the pivoting panel taught by Kishi "in order to obtain an apparatus in which the user can see a display while operating the player." This rationale is not applicable to the device of Benthin. In Kishi, the buttons on the operating part pivot down so that the user can see the display 5 while operating the player. In Benthin, however, there is no display to see in the recess of the receiver 1. Therefore, there would be no reason to pivot the control panel down. Moreover, as explained above, the proposed modification would make the buttons on the front of the control panel 5 not visible to the user. Thus, the Office Action has not set forth an appropriate rationale for modifying the device of Benthin in view of Kishi, and therefore, the obviousness rejection of the claims cannot be maintained.

The final Office Action fails to respond to the Applicant's argument that the Office's rationale for modifying the device of Benthin to have the pivoting panel taught by Kishi is not applicable to the device of Benthin. Without an appropriate supporting rationale for the proposed modification, the obviousness rejection cannot be maintained.

Amended claim 1 is patentable for the reasons set forth above. The dependent claims are also patentable because they depend from and include the limitations of amended independent claim 1.

Conclusion

Applicants respectfully submit that the patent application is in condition for allowance. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

Stephanie M. Lawley
Stephanie M. Lawley, Reg. No. 55362
LEYDIG, VOIT & MAYER
700 Thirteenth Street, N.W., Suite 300
Washington, DC 20005-3960
(202) 737-6770 (telephone)
(202) 737-6776 (facsimile)

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Amendment or ROA - Final (SML/mlg)